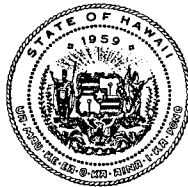


LINDA LINGLE
GOVERNOR OF HAWAII



CHIYOME L. FUKINO, M.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File:

September 30, 2003

Ms. Lynne Woods, Chairperson
Small Business Regulatory Review Board
c/o Ms. Dori Palcovich, Business Advocate
Department of Business, Economic Development and Tourism
250 South Hotel Street, 5th Floor
Honolulu, Hawaii 96813

Dear Ms Woods:

Re: Proposed Amendments to HAR chapter 11-54, Water Quality Standards

The Board raised certain concerns earlier, and I now respond and report on the status of the proposed rules.

The Department of Health (DOH) is changing its proposed amendments to chapter 11-54 to more closely track the federal regulations. Specifically, we propose that HAR section 11-54-1.1(c) begin with the phrase, "Where high quality waters constitute an outstanding national resource." The proposed subsection will thus add the word "national" and drop the word "existing" and will make subsection (c) copy the corresponding federal regulation on outstanding national resource waters. This change was requested by the Board.

In all other respects, the proposed amendments remain the same as previously proposed.¹ I attach a copy of the substantive changes to meet federal requirements; it does not cover all the typographical corrections and updating of legal references. I also attach the rationale for the changes.

Additionally, we have edited the rationale document for the Water Quality Standards' amendments to address concerns expressed in the Board's March 20, 2003 memorandum and later communications. Section II of the rationale document now contains a concise description of the implementation activities associated with the antidegradation policy, and Section III includes a summary of the costs associated with the bacterial amendment. The Board asked about the costs.

¹ We note that the proposed section HAR 11-54-1.1(a) covers "existing water uses," which is broader than the "existing instream water uses" in 40 CFR § 131.12(a)(1); we think that covering both instream and marine existing uses is important, and we received no objections earlier.

Lynne Woods, Chairperson
September 30, 2003
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We were unable to locate any final federal guidance addressing how states are to determine which waters should be designated as "outstanding national resource," despite our search and repeated questions to EPA Region 9. The State will, therefore, be responsible for developing its own process for designation that complies with all existing federal rules. If you can refer us to any specific, final federal guidance related to this topic, we will review it.

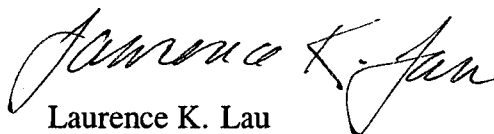
I hope this addresses the concerns stated in the Board chair's memorandum of March 20, 2003, to June Harrigan, and the concerns that you and others raised at our meeting on June 19, 2003. Please review the attached rationale document and the excerpts from the proposed amendments. Please contact Dr. Harrigan at the Environmental Planning Office directly at 586-4337 if you have any further questions. You are also welcome to call me at 586-4424.

For your information, Section 303(c) of the Clean Water Act requires the State to review and revise the water quality standards at least every three years. The present amendments are overdue, and DOH should be working on the next cycle now. Therefore, following approval of these proposed amendments through the public hearing process, DOH will initiate the planning cycle for the next set of amendments. We will form an advisory group and address more substantive questions regarding the standards.

By copy of this letter I am alerting the Department of Budget & Finance that DOH will soon be submitting slightly revised documents to amend chapter 11-54. The revisions will be consistent with this letter.

DOH needs to adopt the new bacteria standards for recreational waters before April 2004, a deadline set by the federal Beach Act, so we look forward to going to public hearing soon.

Sincerely,



Laurence K. Lau
Deputy Director for Environmental Health

Attch. Excerpts from the HAR 11-54 Ramseyer Version
Rationale Document for Proposed Changes to HAR 11-54

cc: Denise Walker, SBRRB Discussion Leader
Stanley Shiraki, B&F
June Harrigan, EPO, DOH
Thomas Arizumi, EMD, DOH
Denis Lau, CWB, DOH